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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/738,540	12/17/2003	John P. Holmquist	UCF-381	8265

23717 7590 06/23/2006

LAW OFFICES OF BRIAN S STEINBERGER  
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COCOA, FL 32922

EXAMINER
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LINDSEY, RODNEY M

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/738,540

**Applicant(s)**

HOLMQUIST ET AL.

**Examiner**

Rodney M. Lindsey

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.  
4a) Of the above claim(s) 23-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/17/03</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of the invention of Group I in the reply filed on April 13, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Note that the restriction requirement was specified in paragraph 2 of the last Office action.

2. Claims 23-39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on May 13, 2006.

### *Oath/Declaration*

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the mailing address of each inventor. A mailing address is an address at which an inventor customarily receives his or her mail and may be either a home or business address. The mailing address should include the ZIP Code designation. The mailing address may be provided in an application data sheet or a supplemental oath or declaration. See 37 CFR 1.63(c) and 37 CFR 1.76.

Also, the priority of SN 60/434,023 should be with respect to 35 USC 119(e) as opposed to 35 USC 120.

### *Drawings*

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: arrow 8X. Corrected

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drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

5. The disclosure is objected to because of the following informalities: on page 12 the table results are confusing and should be rechecked. On page 15, line 16 "portion 4" appears to be an error.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by French patent to Baron et al. With respect to claim 1 note the device as shown in Figures 1 and 4 with the head suit portion connected to the body suit portion and including a face mask 7, the head suit portion having a window portion about a visor 1 and in front of the face mask 7, the device comprising a

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closed air space between the face mask and window portion. With respect to claims 2-5 as the body suit of Baron et al. effects a cover for the users body it as much would inherently function as a bio hazard suit or firefighter suit or space suit or diving suit.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 6-9, 11, 12, 14, 15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over French patent to Baron et al. With respect to claims 6, 14 and 18 note the flexible housing/sheet 4 of Baron et al. That the housing 4 be see through plastic would have been considered an obvious matter of choice and design to one of ordinary skill in the art at the time of the invention since all that would have been required is that the user have an unobstructed line of sight as provided by Baron et al. Further with respect to claim 18 that the sheet attach behind the head of the worker would have been considered an obvious matter of choice and design in view of such teaching at 4 of Baron et al. since all that would have been critical is that the closed air space be formed. With respect to claim 7 note the cone shape of housing 4. With respect to claim 8 note the first and second ends of the housing 4 sealingly attached as claimed as shown in Figure 4. With respect to claims 9 and 15 note that the housing 4 is elastic and is attached as claimed. With respect to claim 11 note the permanently affixed second end of the housing 4 as claimed. With respect to claim 12 it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the housing 4 such that the

second end possesses an elastic attachment like the first end to achieve the advantage of effecting removable attachment between the housing 4 and visor 1.

10. Claims 10, 13, 16, 17, 19, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over French patent to Baron et al. in view of Spano et al. With respect to claims 10, 13, 16 and 17 it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the first and/or second ends of the housing 4 of Baron et al. with the zipper fasteners at 2, 4 of Spano et al. to achieve the advantage of an alternative means of releasably connecting the housing 4. With respect to claims 19 and 21 it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the device of Baron et al. with the bag at 1 having zipper neck portion fasteners at 2, 4 to incorporate a releasable neck portion.

That the bag be of see through plastic would have been considered an obvious matter of choice and design to one of ordinary skill in the art at the time of the invention since all that would have been required is that the user have an unobstructed line of sight as provided by Baron et al. With respect to claim 22 note the exhaust line of the face mask 7 as shown in Figure 4 of Baron et al.

11. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over French patent to Baron et al. in view of Spano et al. as applied to claim 19 above, and further in view of Garofalo. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the neck portion fastener of the modified device of Baron et al. with the elasticity as at 201 of Garofalo to achieve an alternative closure at the neck as taught by Garofalo (see column 4, lines 50-53.

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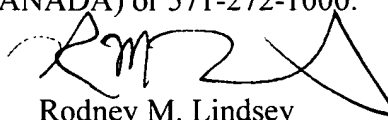
***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note particularly, the completely transparent helmet of Schaeffer, the neck portions of Saito, Perlinger and Fifield and the air spaces defined in Rowe, Luisada and Yelland et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (571) 272-4989. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Rodney M. Lindsey  
Primary Examiner  
Art Unit 3765

rml